In the High Court of Judicature at Madras

Dated: 12/07/2002

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The Honourable Mr.Justice R.Jayasimha Babu

Writ Petition No.14658 of 1995

S.Mohamood Basha ..... Petitioner

-Vs-

1. The Director of Collegiate Education,
College Road, Madras 600 006.

2. The Joint Director of Collegiate
Education, Vellore Region,
Vellore, N.A.A. District.

3. The Secretary and Correspondent
C.Abdul Hakeem College,
Melvisharam, N.A.A. District. ..... Respondents

Writ petition filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus to call for the records from the file of the second respondent pertaining to proceedings in O.M. C4/12925/92 and to quash the order dated 26.04.1993 and consequently direct respondents 1 and 2 to release the annual increments payable to the petitioner from 1993 and also place the petitioner in Senior scale in accordance with the Career Advancement Scheme pursuant to the order made in G.O. Ms.No.1785, Education dated 05.12.1995 and award exemplary costs.

!For Petitioner : Mr.K.Chandru,
Senior Counsel

^For Respondents 1 & 2: Mr.S.T.S. Murthy,
Special Government Pleader

For Respondent 3 : No appearance

:ORDER

Petitioner is a lecturer in an aided college which is governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976 (in short, ` the Act'). Petitioner had not studied Tamil. He has stated that he is conversant

with Urdu and Telugu languages as also in English.

2. The petitioner is a lecturer in Zoology. He had studied M.Sc., M.Phil. The qualifications held by the petitioner satisfy the qualifications which have been prescribed by the University for that post.

3. The Act in Chapter IV deals with the terms and conditions of service of teachers and other persons employed in private colleges. Section 15 deals with qualifications for teachers and other persons employed in private colleges and it provides that, "The University may make regulations, statutes, or ordinances specifying the qualifications required for the appointment of teachers and other persons employed in any private college".

4. Section 16 deals with the appointment of teachers and other persons in private colleges. It provides that, (1) No person who does not possess the qualifications specified under Section 15 shall, on or after the date of commencement of this Act, be appointed as teacher or other employee in any private college. (2) Nothing contained in this section or any regulation, statute or ordinance made under Section 15 shall apply to any person who on or before the date of commencement of this Act, is employed as teacher or other employee in any private college."

5. The petitioner's appointment to the post held by him is fully in accordance with the prescription made by the University regarding qualification to be held by such persons. However, when the approval of the Government was sought for his appointment as the college was a Government aided college and funds have to be provided by the Government, the approval was not given on the ground that the petitioner had not studied Tamil and had also not passed the language test prescribed under Rule 12A of the Tamil Nadu State and Subordinate Service Rules which Rules are applicable to Government servants.

6. The petitioner questions the validity of that order refusing to approve his appointment to the post which he has been holding. Learned senior counsel for the petitioner invited my attention to the decision of this Court in the case of The Saliar Mahajana Hr. Sec. School vs. The Joint Director of Schools, 1995 WLR 277, which judgment was in respect of a school governed by the Tamil Nadu Recognised Private School (Regulation) Act, 1973.

7. This Court in paragraph 8 of that judgment pointed out that so far as the aided schools are concerned, the Rules cannot be treated as statutory Rules framed under Article 309 of the Constitution as, the very Article is inapplicable to private schools. Rule 12A of the Tamil Nadu State and Subordinate Service Rules, therefore, cannot be regarded as statutory rule so far as the employees of the aided colleges are concerned. Moreover, the Government does not have the power under the Act to prescribe the qualification for the post. The Act specifically reserves that power to the University and it is the University which has to decide the qualification required to be possessed by the person appointed to the post in the aided colleges. Petitioner has those qualifications. The Government cannot withhold approval of his appointment on an extraneous ground, namely, his not

having studied Tamil or taken a test prescribed for Government servants under the Rules governing and applicable to Government servants. The impugned order is, therefore, set aside. The writ petition is ordered accordingly. WMP. No.23331 of 1995 is closed.

Copies to

1. The Director of Collegiate Education, College Road, Madras 600 006.

2. The Joint Director of Collegiate Education, Vellore Region, Vellore, N.A.A. District.

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